

<p align="center">STATE OF MONTANA</p> <p align="center">COMPLIANCE SUPPLEMENT FOR AUDITS OF</p> <p align="center">LOCAL GOVERNMENT ENTITIES</p>	REF: L&I-1
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PROGRAM/SUBJECT: Building Code Enforcement Program	

TYPES OF RECIPIENTS:**

Counties, cities and towns with code enforcement programs certified by:
Montana Department of Labor and Industry,
Business Standards Division,
Bureau of Building and Measurement Standards
(**Note: The certified entities do not receive funds from the Department of Labor and Industry but are authorized to charge fees. See below.)

INFORMATION CONTACT:

Montana Department of Labor and Industry,
Business Standards Division,
Bureau of Building and Measurement Standards
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I. BUILDING CODE ENFORCEMENT PROGRAM OBJECTIVES:

The Bureau of Building and Measurement Standards (referenced throughout as “the Bureau”) within the Department of Labor and Industry may certify a city, county, or town to enforce certain building, mechanical, electrical and/or plumbing codes within the respective local government jurisdictions. Codes adopted and enforced by the local governments must be the same as those adopted (and as modified) by the Bureau. The establishment of permit fees shall be left to the local governments, but a list of current permit fees must be submitted to the Bureau when the fees are first established or subsequently amended.

II. BUILDING CODE ENFORCEMENT PROGRAM PROCEDURES:

Counties, cities and towns wishing to adopt and enforce building codes within their jurisdictional areas must apply for and receive the approval of the Bureau. A county, city or town may not enforce a building code unless:

- (a) the code enforcement program has been certified by the Bureau as in compliance with applicable statutes and department certification rules;
- (b) the current adopted code (adopted by ordinance or administrative action), a current list of fees to be imposed, and a current plan for code enforcement , and staff qualifications have been filed with and approved by the Bureau; and
- (c) any building code enforcement staff providing inspections, plan review or code interpretations must be licensed or certified as per ARM 24.301.206. (MCA 50-60-302(1))

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II. **BUILDING CODE ENFORCEMENT PROGRAM PROCEDURES - continued:**

A city or town may enforce its building code only within the incorporated limits of the city or town. A county may adopt a building code under this chapter on a countywide basis unless a city or town within the county has adopted a building code. If a city or town within the county has adopted a building code, then the county may not enforce the county building code in that city or town. A county, city or town may contract for inspections and/or plan review services, but must provide copies of such contracts to the Bureau for approval prior to the contractual services being provided. (NOTE: A county, city or town cannot contract for the entire program to be serviced by and managed by another entity. The administrative services should be maintained by the certified jurisdiction, not a contracted source.). (MCA 50-60-304; ARM 24.301.231)

III. **AGREED-UPON PROCEDURES ENGAGEMENT**

- A city, county, or town with a certified building code enforcement program that had a building code program reserve fund balance in the preceding fiscal year in excess of \$10,000 and had building permit revenues in the previous fiscal year of more than \$10,000 shall require its independent auditor, in conjunction with the audit required by MCA 2-7-503, to perform agreed-upon procedures to determine whether the city, county or town has complied with the financial related statutes and administrative rules relating to city, county or town building code enforcement programs. The Bureau may require cities, counties, and towns with certified building code enforcement programs which do not meet the above criteria to provide such an agreed-upon procedures engagement on a case-by-case basis. The agreed-upon procedures engagement must be performed and reported in accordance with standards prescribed by the American Institute of Certified Public Accountants. (ARM 24.301.208(3))
- **The agreed-upon procedures engagement must include the procedures necessary to satisfy the reporting format adopted by the Bureau at ARM 24.301.208. Use of this reporting format will become mandatory beginning on July 1, 2007, and will apply to any independent agreed-upon procedures engagement performed after that date (regardless of the fiscal year of the engagement). A copy of the document may be obtained from the Department of Labor and Industry, Bureau of Building and Measurement Standards, P.O. Box 200517, 301 South Park, Helena, MT 59620-0517. Copies may also be obtained by facsimile request sent to Certified City Program at (406) 841-2050, by email request sent to bsdbcb@mt.gov, or by downloading the document from the Department of Labor and Industry's web site at www.buildingcodes.mt.gov. (ARM 24.301.208(3) & (4))**
- The cost of the agreed-upon procedures engagement shall be paid by the city, county or town, but may be considered a direct cost of the code enforcement program. (ARM 24.301.208(5))

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III. **AGREED-UPON PROCEDURES ENGAGEMENT - continued**

- Copies of the report on applying agreed-upon procedures shall be filed with both the Bureau of Building and Measurement Standards and the Local Government Services Bureau of the Department of Administration. (ARM 24.301.208(6))
- For purposes of reporting direct charges against a building code enforcement program in an agreed-upon procedures audit, time and motion or cost allocation studies will not be acceptable as a basis to support direct charges. (ARM 24.301.208(2))

Suggestion: The auditor should consider whether any findings resulting from performing the agreed-upon procedures should be included in the audit report of the city, county or town, as well as in the accountant's report on applying agreed-upon procedures.

FOR CPA'S PERFORMING AGREED-UPON PROCEDURES: The following compliance requirements are presented for informational purposes as you perform the Agreed-Up-on Procedures engagement discussed above. DO NOT PERFORM THE "SUGGESTED AUDIT PROCEDURES" BELOW. INSTEAD, PERFORM THE AGREED-UPON PROCEDURES IN THE BUREAU'S MANDATORY FORMAT AS DISCUSSED ABOVE.

FOR AUDITORS OF LOCAL GOVERNMENTS THAT ARE NOT REQUIRED TO HAVE AN AGREED-UPON PROCEDURES ENGAGEMENT: You may wish to test for compliance with some of the following requirements as part of the standard GAS financial and compliance audit. The Suggested Audit Procedures are presented to assist you.

IV. **COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

1. **PERMIT FEES:**

- Each county, city or town certified under Section 50-60-302, MCA, shall, within its jurisdictional area, ensure that all construction-related fees or charges imposed and collected by the municipality or county are necessary, reasonable, and uniform and are:
 - a. except as provided in c. below, used only for building code enforcement, which consists of those necessary and reasonable costs directly and specifically identifiable to the enforcement of building codes, plus indirect costs charged on the same basis as other local government proprietary funds not paying administrative charges as direct charges. If indirect costs are waived for any local government proprietary fund, they must also be waived for the building codes enforcement program. Indirect charges are limited to the charges that are allowed under federal cost accounting principles that are applicable to a local government.

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IV. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

1. PERMIT FEES - continued:

(Note: Permit fees are not to be used to support fire departments, planning, zoning or other activities, except to the extent that employees in those programs provide direct plan review, inspection or other building code enforcement services for the building code enforcement program. (ARM 24.301.203(2)))

- b. reduced if the amount of the fees or charges accumulates above the amount needed to enforce building codes for 12 months. The excess must be placed in a reserve account and may only be used for building code enforcement. Collection and expenditure of fees and charges must be fully documented. **(Note: The “reserve account” referenced here represents the ending equity of the fund in which the entity accounts for its building code enforcement program.)**
- c. allocated and remitted to the Bureau, in an amount not to exceed 0.5% of the building fees or charges collected, for the building codes education program. (See Compliance Requirement No. 2 below)
(MCA 50-60-106(2)(g); ARM 24.301.203)

- The local government must maintain a system and adequate records to:
 - a. document that permit fees are used only for those costs related to building code enforcement activities, as defined above;
 - b. document the amount by which revenues from permit fees differs from the costs related to building code enforcement activities each year;
 - c. document the amount maintained as a reserve and the percentage of the costs of building code enforcement activities that the reserve represents;
 - d. document that any reserve is utilized only for the cost of building code enforcement activities’ and
 - e. document that permit fees were reduced as required in the event the reserve exceeds the maximum reserve allowed, as discussed above.
 (ARM 24.301.203(4))

Suggested AUDIT Procedures – PERMIT FEES:

- Test revenue from permit fees and determine that permit fees charged are in accordance with the permit fee schedule as established by the local government and as filed with and approved by the Bureau.
- Review and test the local government’s system and records as necessary to ensure that permit fees are only used for building code enforcement, as defined in MCA 50-60-106 and above.
- If indirect costs are charged to the building code enforcement program and paid with permit fees:
 - a. determine that the indirect costs are charged on the same basis as other local government proprietary funds not paying administrative charges as direct charges;

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IV. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES

Suggested AUDIT Procedures – PERMIT FEES - continued:

- b. determine that indirect costs have not been waived for any local government proprietary fund (if so, they must also be waived for the building code enforcement program); and
 - c. determine that indirect charges are limited to the charges that are allowed under federal cost accounting principles that are applicable to a local government (OMB Circular A-87).
- Determine that permit fees are reduced if the amount of the fees or charges accumulates above the amount needed to enforce building codes for 12 months.

2. DISTRIBUTION OF 5% OF PERMIT FEES:

- Local government programs certified for the enforcement of building codes shall remit to the Bureau 0.5% of building fees or charges collected for the building codes education fund.
 - a. Local governments with annual revenues from building fees and charges of **\$100,000 or more** shall make the payment in two semi-annual installments, the first half on or before February 1, for revenues collected between the preceding July 1 and December 31, and the second half on or before September 1 for revenues collected between the preceding January 1 and June 30.
 - b. Local governments with annual revenues from building fees and charges of **less than \$100,000** may make one annual payment on or before September 1 for revenues collected between the preceding July 1 and June 30. (ARM 24.301.211)

Suggested AUDIT Procedure - DISTRIBUTION OF 5% OF PERMIT FEES:

- Determine the total amount of annual revenues from building fees and charges. Verify that the payment remitted to the State by the local government was equal to 0.5% of this total revenue amount. Verify also that the local government remitted the payments to the State within the due dates discussed above.

3. NOTIFICATION:

- A local government with a certified code enforcement program shall notify the Bureau, within 10 days whenever any of the following events occur:
 - a. where a code enforcement program provides any part of its services in accordance with or through contractual arrangements, any material changes in such contracts, including but not limited to breach, reformation, rescission, or modification must be reported;
 - b. when building officials or supervisory personnel are no longer employed in those capacities within the certified code enforcement programs; or

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IV. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES

3. **NOTIFICATION - continued:**

- c. **Effective 2/24/2006**, when the jurisdictional area changes due to annexation of additional parcels of land. A map showing any changes to the jurisdictional area must be provided to the Bureau within 45 days of any such change.
(ARM 24.301.209)

Suggested AUDIT Procedure - NOTIFICATION:

- Through inquiry and review of records, verify that the local government notified the Bureau, if any of the events discussed above occurred during the audit period.

4. **ANNUAL REPORTING**

- Beginning on September 1, 2004, and continuing thereafter on a three year rotating basis, counties, cities and towns shall submit annual reports which provide detailed answers to each of the criteria listed below (items a. through k.), even if there has been no change since the previous reporting period, as follows:
(ARM 24.301.207(4))
 - a. beginning in September 2004, counties, cities and towns whose names begin with the letters A through H;
 - b. beginning in September 2005, counties, cities and towns whose names begin with the letters I through P; and
 - c. beginning in September 2006, counties, cities and towns whose names begin with the letters Q through Z.
- The annual report required to be submitted every three years should contain all of the following information:
(**Note:** Each item below should be answered and tabbed separately from all other annual report information.)
 - a. an official map or certified legal description of the jurisdictional area;
 - b. a list of building-related codes being enforced, including edition dates;
 - c. copies of ordinances which adopt each building-related code or each administrative order used to adopt each building-related code if not previously provided in accordance with ARM 24.301.202;
 - d. a list of the type of structures subject to and a list of the type of structures exempted from the building related codes;
 - e. a schedule of fees charged for permits;
 - f. an accounting of the collection and expenditure of fees and charges for the immediately preceding fiscal year;
 - g. a copy of the ordinance establishing the appeal procedure or the acknowledgment that the International Building Code appeals procedure will be followed;
 - h. a list of members of the appeals board and their qualifications;

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IV. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

4. ANNUAL REPORTING - continued

- i. the current plan of enforcement:
 - (i) a general description of how permits are applied for and issued;
 - (ii) how plan reviews are conducted;
 - (iii) how and when inspections are made;
 - (iv) how final approvals or certificates of occupancy are issued; and
 - (v) how factory-built buildings and manufactured homes are permitted and inspected;
 - j. a list of employees inspecting, reviewing plans or approving any installation with descriptions of responsibilities and qualification status of each employee as provided in the ARM 24.301.206; and
 - k. if any services relating to building code enforcement are provided through contractual arrangements, a current copy of any and all such contracts.
(ARM 24.301.207(3))
- State law and the Bureau's ARMs state that a local government *may* submit an annual report at other times other than as required above, and that the Bureau *may* request a local government with a certified code enforcement program which has not filed an annual report to respond to inquiries regarding its code enforcement program so the Bureau can ensure program functions are being properly performed as required by MCA 50-60-302(2). The Bureau's practice is to always request an annual report, whether the required complete three-year report, or an interim report. Interim reports are required to include the following information:
 - a. an official map or certified legal description of the jurisdictional area, if the jurisdictional area has changed during the fiscal year and the changes have not already been reported to the Bureau;
 - b. a list of building-related codes being enforced, including edition dates;
 - c. if there were any changes in codes or applicable ARMS's being enforced, a complete copy of the adopting ordinance or administrative action;
 - d. an accounting of the collection and expenditures of fees and charges for the immediately preceding fiscal year (including supporting documentation of reserve balances);
 - e. a list of employees inspecting, reviewing plans or approving any installation with descriptions of responsibilities and qualification status of each employee (including current copies of certification/licensure documents); and
 - f. a copy of any contractual agreement to provide services to the building code enforcement program, if a current one is not already on file.
 - Annual reports shall be filed with the Bureau on or before September 1 of each year for the immediately preceding fiscal year. (ARM 24.301.207(1)& (2))

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IV. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

Suggested AUDIT Procedure - ANNUAL REPORTING:

- Review the entity's annual or interim report submitted to the Bureau, and verify that the information provided is supported by documentation maintained by the entity's building code enforcement program.